

EXHIBIT C

In the Matter Of:
Greene vs Tyler Technologies

30(b)(6) Abigail Diaz-Pedrosa

October 09, 2019



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Atlanta, GA 30316
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1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION
4 SUZANNE GREENE,)
5 Plaintiff,) CIVIL ACTION NO.
6 vs.) 1:19-cv-01338-AT
7 TYLER TECHNOLOGIES, INC.,)
8 Defendant.)

11 30 (B) (6) DEPOSITION OF TYLER TECHNOLOGIES

12 BY WITNESS: ABIGAIL DIAZ-PEDROSA

13 October 9, 2019

14 4:15 p.m.

15 Dentons US, LLP

16 303 Peachtree Street, NE

17 Suite 5300

18 Atlanta, Georgia 30308

20 Reported By: Judith L. Leitz Moran, RPR, RSA,

21 Certified Court Reporter CCR-B-2312

22 Job No. 538

1 APPEARANCES:

2

3 On behalf of the Plaintiff:

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6 FITZPATRICK & BENJAMIN, LLC

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9 Atlanta, Georgia 30303

10

11 On behalf of the Defendant:

12 PAULO B. McKEEBY, ESQUIRE

13 REED SMITH LLP

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15 Suite 1700

16 Dallas, Texas 75201

17

18 ALSO PRESENT:

19 HILLARY PASCH, CORPORATE REPRESENTATIVE

20 TYLER TECHNOLOGIES

21

22

23

24

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1 MR. HERRINGTON: This is the deposition
2 by cross-examination of Tyler Technologies, Inc.,
3 pursuant to 30(b)(6) of the Federal Rules of Civil
4 Procedure.

5 The deposition is taken for the purposes
6 of discovery and for all other purposes allowed by
7 the Federal Rules of Civil Procedure.

8 My name is Matthew Herrington. I'm
9 counsel for the Plaintiff in this case, Suzanne
10 Greene.

11 Also present is Paulo McKeeby, counsel of
12 record for the Defendant. And Hillary Pasch, who
13 is a corporate representative.

14 Ms. Moran, will you please swear the
15 witness.

16 ABIGAIL DIAZ-PEDROSA
17 being first duly sworn, was examined as follows:

18 THE WITNESS: I do.

19 EXAMINATION

20 BY MR. HERRINGTON:

21 Q Please state your full legal name.

22 A Abigail Diaz-Pedrosa, P-E-D-R-O-S-A.

23 Q Okay. And you go by Abby Diaz?

24 A Yes, I do.

25 Q Now, you've been designated by Tyler

1 Technologies to speak today on several topics in
2 this 30(b)(6) deposition; is that correct?

3 A Yes.

4 Q So referring back to what was previously
5 marked as Exhibit 1, my understanding is that
6 you're going to talk to me about Topics 11 through
7 15?

8 MR. McKEEBY: No. Not Topic 11.

9 MR. HERRINGTON: No.

10 MR. McKEEBY: Because it relates to
11 settlement agreements.

12 MR. HERRINGTON: It's limited to the
13 identities of the parties.

14 MR. McKEEBY: Well, that's covered in
15 Topic 14.

16 MR. HERRINGTON: Okay.

17 MR. McKEEBY: So I don't see why there's
18 the need to discuss Topic 11. And Topic 12, she's
19 not been designated. Just 13, 14 and 15. With the
20 understanding that 14 is going to encompass part of
21 what's included in Topic 11.

22 MR. HERRINGTON: All right.

23 BY MR. HERRINGTON:

24 Q Would you please look at the topic
25 numbers and confirm that that's accurate?

1 A As Paulo just summarized it, that is my
2 understanding.

3 Q Have you been deposed before?

4 A No.

5 Q Have you taken a deposition?

6 A Yes.

7 Q Okay. So you're very familiar with how
8 depositions work?

9 A Yes.

10 Q And I can skip all the preliminaries with
11 you?

12 A Yes.

13 Q Okay. Would you tell me about your
14 educational background?

15 A Sure. I graduated from Georgetown
16 University in Washington, D.C. And after college,
17 I went to Cornell Law School and I graduated from
18 Cornell in 2004.

19 Q And where do you currently reside?

20 A Falmouth, Maine.

21 Q How do you spell that?

22 A F-A-L-M-O-U-T-H.

23 Q And do you have any relatives in Georgia?

24 A Yes.

25 Q And who are they?

1 A My sister, brother-in-law, and two
2 nephews.

3 Q What is their last name?

4 A Ryan.

5 Q R-Y-A-N?

6 A Yes.

7 Q Okay. Do they live in the Northern
8 District of Georgia?

9 A They live in Atlanta.

10 Q Okay.

11 A Is that in the Northern District of
12 Georgia?

13 Q Yes.

14 A Okay.

15 Q Where does -- what are their names?

16 A Matt Ryan, Sarah Ryan.

17 Q The nephews are minors?

18 A Yes.

19 Q Okay. What do they do for a living?

20 A Matt is an athlete and Sarah is a
21 stay-at-home mother.

22 Q Is he an athlete that I would have heard
23 of if I followed sports?

24 A Yes.

25 Q Okay. What kind of sport?

1 A He is a quarterback for the Atlanta
2 Falcons.

3 Q Okay. That's funny. Yeah, I had no
4 clue.

5 Have you ever been a party to a lawsuit
6 individually?

7 A No.

8 Q Okay. No criminal history?

9 A No.

10 Q And where did you begin working after law
11 school?

12 A I began -- well, I clerked for a judge on
13 the Third Circuit --

14 Q Uh-huh.

15 A -- for one year. And after that, I
16 became a litigation associate at Kirkland & Ellis.

17 Q I'm sorry.

18 A Excuse me?

19 Q I said I'm sorry.

20 A Yes, thank you for your sympathies.
21 Kirkland & Ellis in their New York City
22 office.

23 Q Okay. And what practice group are you
24 in?

25 A Litigation.

1 Q Okay. And how long were you there?

2 A I was there about six and a half years.

3 Q And after Kirkland?

4 A My next job was at Tyler.

5 Q Okay. And you've been with Tyler ever
6 since?

7 A From 2012 to the present.

8 Q Okay. And what was your first position
9 with Tyler?

10 A Contract specialist.

11 Q Okay. So drafting contracts with the
12 customers?

13 A Drafting and negotiating contracts and
14 related documents.

15 Q Okay. And what position did you have
16 after contract specialist?

17 A Associate general counsel.

18 Q Okay. And when did that happen, that
19 change?

20 A As best as I can remember, it was in
21 2014.

22 Q Okay. And how long did you hold that
23 position?

24 A For about three years, I think.

25 Q And you became general counsel?

1 A Yeah, we call it chief legal officer.

2 Q Chief legal officer. And that change
3 happened when?

4 A I believe January of 2017.

5 Q Okay. Who was the chief legal officer
6 before you?

7 A At that time we called it general
8 counsel, and it was Lynn Moore.

9 Q And how long had Lynn Moore been the
10 general counsel?

11 A More than 10 years.

12 Q Okay.

13 A More than 15 years, I think.

14 Q So Lynn Moore was general counsel at the
15 time of the Beall litigation?

16 A Yes.

17 Q And you were not with Tyler at that time?

18 A Correct.

19 Q Is Lynn Moore still with the company?

20 A Yes.

21 Q In what position?

22 A President and CEO.

23 Q What I have referred to as the Beall
24 litigation, was an FSLA collective action filed
25 against Tyler Technologies?

1 A Tyler was one of the Defendants, yes.

2 Q Okay. What is the other defendant, was
3 it EDP Enterprises, Inc.?

4 A I think that's the correct name of the
5 corporate entity. I know it as EDP.

6 Q And is that a company that's owned by
7 Tyler Technologies?

8 A Tyler acquired EDP, yes.

9 Q When did it acquire EDP?

10 A I believe it was sometime in 2007.

11 Q Was it in an acquisition structurally
12 similar to the acquisition of ExecuTime?

13 MR. McKEEBY: Object to the scope of the
14 question as outside -- or rather, object to the
15 question as outside the scope of the topic
16 designation.

17 But I'll allow you to answer if you know.

18 A I don't know.

19 BY MR. HERRINGTON:

20 Q Do you know if they took on employees
21 from EDP?

22 A It is my understanding that they did.

23 Q Okay. And they acquired software from
24 EDP?

25 A Yes.

1 Q Okay. So it does share that in common
2 with the acquisition of ExecuTime?

3 A Yes.

4 Q Okay. Now, it was an FLSA collective
5 action for implementation consultants among others?

6 A Implementation consultants, not by that
7 name. By that role and other roles, yes.

8 Q Okay. So by -- at least some of the
9 Plaintiffs were performing the work that would be
10 described in the job description for an
11 implementation consultant that Ms. Pasch examined
12 earlier?

13 MR. McKEEBY: Object to the form of the
14 question.

15 You can answer.

16 A I believe they would have performed some
17 of those functions, yes. Whether it translated
18 line by line, I do not know.

19 BY MR. HERRINGTON:

20 Q All right. Do you know how many
21 plaintiffs there ultimately were in that case
22 before it settled?

23 A How many opt-in plaintiffs?

24 Q Opt-in plus named plaintiffs.

25 A I think opt-in plus named settled

1 somewhere just north of 20. And by settled, I
2 don't mean settled in the litigation sense, I mean
3 the number hovered somewhere just north of 20.

4 Q I see.

5 So were there opt-outs at some point?

6 A Yes, sir.

7 Q So at the highest, it was over 20 and
8 then somewhat lower at the end?

9 A It might have always remained over 20
10 even at the end, but there were opt-outs.

11 Q And it was alleging overtime violations,
12 correct?

13 A It alleged that the roles had been
14 misclassified as exempt under FLSA, and that,
15 therefore, they were entitled to be reclassified as
16 nonexempt and paid overtime wages.

17 Q Okay. Can you tell me about -- that case
18 was ultimately settled, correct?

19 A Correct.

20 Q Okay.

21 (Deposition Exhibit 31 marked.)

22 BY MR. HERRINGTON:

23 Q Would you agree that Exhibit No. 31,
24 which has just been given to you, is a copy of the
25 Motion to Approve Settlement that was filed in that

1 case? The final Motion to Approve Settlement that
2 was filed in that case?

3 A I don't know if it was the final motion
4 for settlement approval.

5 Q Do you know how many motions there were?

6 A No.

7 Q Okay. Do you have any reason to believe
8 there were more than two?

9 A No reason to believe, no.

10 Q All right. So this was filed and then
11 the case was settled at some point, correct?

12 A Given the case caption and docketing
13 information at the top, I would agree with you that
14 this was filed.

15 I am generally aware that a motion for an
16 order approving settlement was filed. And I am
17 also generally -- and I do know that the case was
18 ultimately resolved through settlement.

19 Q Okay. Now, following this -- well, back
20 up.

21 In the Beall litigation, there were
22 employees who shared the job duties of what
23 implementation consultants now perform, correct?

24 A At least at a general level, yes.

25 Q What were they called in the -- in the

1 **Beall litigation, what were they referred to as?**

2 A As best I can recall, there were actually
3 three different references. Trainer, customer
4 liaison, and something along the lines of education
5 specialist. That last one I can't remember
6 exactly, but it had the word "education" in the
7 title.

8 Q **I see.**

9 Do you know anything about the specific
10 roles that those different people played?

11 A At EDP, I do not.

12 Q **Were they reclassified after the**
13 **acquisition of EDP or did Tyler continue to use the**
14 **preexisting job titles?**

15 MR. McKEEBY: Object to the form of the
16 question as beyond the scope of the topic
17 designation.

18 You can answer if you know.

19 A I don't know specifically. I can only
20 speak to what Tyler's general practice would be.
21 BY MR. HERRINGTON:

22 Q **So after the company was sued in that**
23 **case, did it investigate whether the administrative**
24 **exemption was appropriately applied or not?**

25 MR. McKEEBY: Object to the form of the

1 question as vague and ambiguous.

2 You can answer.

3 A I think Tyler investigated multiple
4 aspects of the allegations and I -- yes, as part of
5 the reaction to the lawsuit, Tyler looked to
6 confirm whether implementation consultants or folks
7 in an implementation role are properly classified
8 as exempt under the administrative exception.

9 BY MR. HERRINGTON:

10 Q And who performed that review?

11 A It was a group of internal Tyler
12 resources and outside counsel.

13 Q Who were the internal resources?

14 A They at least included Lynn Moore; our
15 former head of HR, Bob Sansone, S-A-N-S-O-N-E; and
16 other HR leaders.

17 Q Lynn Moore was an attorney, though?

18 A Lynn Moore at the time was in-house
19 counsel for Tyler, yes.

20 Q So he was the only internal attorney to
21 review that question?

22 A Yes.

23 Q Okay. What about outside counsel?

24 A That was Paulo McKeeby and his law firm.

25 Q Do you know if other lawyers besides

1 **Mr. McKeeby worked on that case -- or worked on the**
2 **review?**

3 A I know Paulo had assistance from other
4 lawyers at his firm. I cannot remember their
5 names.

6 Q Okay. And did the company at any time
7 solicit an opinion from Mr. McKeeby about the
8 applicability of the administrative exemption to
9 the employees who were at issue in Beall?

10 MR. McKEEBY: Object to the form of the
11 question.

12 You can answer.

13 A I believe that soliciting Mr. McKeeby's,
14 Paulo's, opinion was something that the Tyler team
15 regularly did.

16 BY MR. HERRINGTON:

17 Q You say you believe rather than that they
18 did. What investigation did you do to learn what
19 actions were taken back then?

20 A I spoke with Lynn, I spoke with Bob, and
21 I spoke with other members from the HR team who
22 were employed by Tyler at the time of the Beall
23 lawsuit as well.

24 Q All right. And what did Mr. McKeeby tell
25 them?

1 A He confirmed that Tyler was properly
2 classifying implementation consultants as exempt
3 from the FLSA overtime wage provisions under the
4 administrative exemption.

5 Q And he told you that that was certain?

6 A He didn't tell me that was certain. He
7 told Tyler.

8 Q Might be the company?

9 A Yeah, he told Tyler that that
10 classification was correct.

11 Q What information was given to Mr. McKeeby
12 prior to him making that determination?

13 A The information would have included job
14 descriptions for those individuals or for that type
15 of role, information about training for that role,
16 information about Tyler's business and the business
17 of our clients that the implementation consultants
18 are used to advance.

19 At least each of those three buckets of
20 information would have been provided and discussed.

21 Q Are there any document -- is there any
22 documentary evidence showing that that -- you know,
23 what was actually conveyed to him in writing?

24 A In writing?

25 Q Uh-huh.

1 A No.

2 Q So all of this was oral?

3 MR. McKEEBY: I need to object to the
4 question as it's outside the scope of the corporate
5 designation.

6 You didn't ask about what information was
7 provided to me, you only asked about the substance
8 of my communications with the company.

9 MR. HERRINGTON: Are you telling her not
10 to answer?

11 MR. McKEEBY: I'm not. I'm advising that
12 I don't think she can answer on behalf of the
13 corporation on the topic -- or rather, on the
14 question because it's not properly identified as a
15 topic designation.

16 I'll let her continue and answer the
17 question.

18 BY MR. HERRINGTON:

19 Q What information -- is there any
20 documentary evidence of Tyler Technologies giving
21 Mr. McKeeby information?

22 A I don't know.

23 Q Have you made a search for that?

24 A No.

25 Q And by "you," I mean Tyler?

1 A And my answer doesn't change.

2 Q And the advice that Mr. McKeeby gave to
3 Tyler that they were properly classified, was that
4 reduced to writing at any time?

5 A No.

6 Q How do you know that it wasn't reduced to
7 writing?

8 A Through conversations I had preparing for
9 this deposition.

10 Q Conversations with whom?

11 A Lynn.

12 Q Tyler Technologies has over a hundred
13 implementation consultants, correct?

14 A Yes.

15 Q Did it have over a hundred implementation
16 consultants in 2009?

17 MR. McKEEBY: Object to the form of the
18 question. It's outside of the scope of the topic
19 designation.

20 If she knows, she can answer. I don't
21 know that she does.

22 A I don't know.

23 BY MR. HERRINGTON:

24 Q Did it solicit any legal advice about the
25 classification of implementation consultants at any

1 time after Mr. McKeeby's representation in the
2 Beall litigation?

3 A I am not aware of specific instances
4 where we asked Paulo to advise us on that again.

5 Q Or any attorney?

6 A No other attorney.

7 Q Is it typical for Tyler Technologies to
8 obtain legal advice that is not reduced to writing?

9 A Yes.

10 Q Even on issues that have -- could
11 potentially have a large financial impact on the
12 company?

13 MR. McKEEBY: Object to the form of the
14 question as outside the scope of the topic
15 designation.

16 I'll let you answer.

17 A Yes, I regularly receive, on behalf of
18 Tyler, legal advice from outside counsel that is
19 verbal.

20 BY MR. HERRINGTON:

21 Q And you take action on verbal advice that
22 could potentially have a large financial impact on
23 the company --

24 MR. McKEEBY: Same objection.

25 BY MR. HERRINGTON:

1 Q -- without reducing it to writing?

2 MR. McKEEBY: Same objection as outside
3 the scope of the corporate designation. You're not
4 asking -- you said nothing that would suggest that
5 you would ask questions about legal advice.

6 MR. HERRINGTON: You've made your
7 objections. Speaking objections are not proper.
8 Make your objection and finish.

9 MR. McKEEBY: Well, I was about to tell
10 her not to answer, but I'll let her answer if she
11 knows or she will know, but you need to stay within
12 the confines of the notice.

13 MR. HERRINGTON: You need to stop making
14 speaking objections.

15 MR. McKEEBY: I'm not. I'm asking you to
16 stay within the confines of the notice.

17 MR. HERRINGTON: Are you done?

18 MR. McKEEBY: I am done.

19 MR. HERRINGTON: Please answer my
20 question.

21 A I need it repeated, please.

22 (Whereupon, the requested portion of
23 the record was read by the reporter.)

24 MR. McKEEBY: Same objection.

25 A So do I take action based on legal advice

1 that's verbally given to me without requiring that
2 it be followed up in written form?

3 BY MR. HERRINGTON:

4 Q On issues that could have significant
5 financial impacts on the company.

6 A Yes, I do.

7 Q Okay. Can you give me other examples?

8 MR. McKEEBY: No. Object to the form of
9 the question. It's outside the scope of the topic
10 designation and it invades attorney/client
11 privilege, so I'm going to instruct her not to
12 answer that one.

13 BY MR. HERRINGTON:

14 Q After the employees in the Beall
15 litigation, trainers, customer liaisons and
16 education specialists were reclassified, at least
17 partially into implementation consultants, did the
18 company get any advice at that point about whether
19 the exemption was still appropriate?

20 MR. McKEEBY: Object to the form of the
21 question.

22 You can answer.

23 A I'm not sure I can answer.

24 BY MR. HERRINGTON:

25 Q They weren't performing the exact same

1 **duties anymore, were they?**

2 A I don't know.

3 **Q Can you tell me what the job duties of a**
4 **trainer were?**

5 MR. McKEEBY: Object to the form of the
6 question as outside the scope of the corporate
7 representative -- or the corporate topic
8 designations.

9 You can answer if you know.

10 A I do not know the job description of EDP
11 trainers.

12 BY MR. HERRINGTON:

13 **Q Or any of them? Any of the three**
14 **categories?**

15 A I don't know how EDP described any of the
16 functions.

17 **Q Those categories continued to be used by**
18 **Tyler after the acquisition, didn't they?**

19 A I think we talked about this. I don't
20 know if and when those titles were changed; and if
21 they were changed, what they were changed to.

22 **Q Can you tell me exactly how the job**
23 **duties of trainers, customer liaisons and education**
24 **specialists overlapped with implementation**
25 **consultants?**

1 MR. McKEEBY: Object to the form of the
2 question. It's outside the scope of the corporate
3 deposition notice.

4 You can answer, if you know.

5 A Did you say exactly how?

6 BY MR. HERRINGTON:

7 Q Yeah.

8 A No.

9 Q Did Mr. McKeeby tell you why they were
10 properly classified as exempt?

11 MR. McKEEBY: "You" being Tyler?

12 MR. HERRINGTON: Yes.

13 A Yes.

14 BY MR. HERRINGTON:

15 Q Why?

16 A They satisfied the three prongs of the
17 administrative exemption.

18 Q And what were those?

19 A Meeting or exceeding the salary
20 threshold, having primary duties that directly
21 related to the general business operations of
22 either EDP or Tyler, depending on the period of
23 time that the work was performed in and who was the
24 employing entity at that time. And then the fact
25 that that exercised discretion and/or independent

1 judgment in performing their primary duties.

2 Q So Mr. McKeeby told you that they were
3 involved in the general business operations of EDP
4 and Tyler rather than their customers?

5 A Both.

6 Thank you, yes, both.

7 Q Was Mr. McKeeby's compliance advice
8 billed to the company?

9 A Yes.

10 Q Okay. So there are billing records for
11 providing that advice?

12 A There would have been at the time.

13 Q As opposed to simple representation in
14 litigation?

15 A I don't understand your question.

16 Q Did Mr. McKeeby bill the company
17 separately for doing a review of -- for perspective
18 purposes about whether implementation consultants
19 should be classified as exempt or nonexempt --

20 MR. McKEEBY: Objection.

21 BY MR. HERRINGTON:

22 Q -- versus simply providing representation
23 in a lawsuit?

24 MR. McKEEBY: Object to the form of the
25 question as outside the scope of the topic

1 designations.

2 You can answer, if you know.

3 A The work he performed was in connection
4 with his representation of Tyler in the Beall
5 litigation. The advice he provided was in that
6 same context and it would have been billed as such.

7 BY MR. HERRINGTON:

8 Q I believe the company expressed in the
9 Motion for Settlement Approval that it was settling
10 to avoid the expense of litigation rather than a
11 belief that it had acted illegally; is that
12 correct?

13 MR. McKEEBY: Where is that?

14 MR. HERRINGTON: Footnote, second or
15 third page.

16 MR. McKEEBY: Okay. What's the question?

17 BY MR. HERRINGTON:

18 Q I'm asking her to confirm that the
19 company stated that it settled because of
20 litigation expenses rather than a belief that it
21 had acted illegally?

22 A I don't think that's a correct summary of
23 Footnote 1.

24 Q "Tyler is agreeing to resolve part of
25 this case only to avoid the fees and costs

1 **associated with continued litigation."**

2 MR. McKEEBY: Yes, you read that
3 correctly.

4 A You read that correctly.

5 MR. HERRINGTON: I'm not deposing you.

6 MR. McKEEBY: Beg your pardon?

7 MR. HERRINGTON: I'm not deposing you.

8 MR. McKEEBY: I'm here as a
9 representative -- I'm here representing a -- as an
10 attorney, a company representative. If you have a
11 question, ask her.

12 BY MR. HERRINGTON:

13 Q **Ms. Diaz, did I read that correctly?**

14 A You read that portion of Footnote 1
15 correctly.

16 Q **It did express that it was resolving this**
17 **part of the case only to avoid fees and costs**
18 **associated with continued litigation.**

19 A You read that portion of Footnote 1
20 correctly. That is not how you had previously
21 summarized Footnote 1.

22 Q **How much did Tyler spend on its**
23 **representation in Beall?**

24 A I do not know.

25 Q **I may have asked you this already, but**

1 I'm going to ask you again to refresh my memory.

2 A Uh-huh.

3 Q Can you provide any more information
4 about what was provided to Mr. McKeeby about the
5 job duties of implementation consultants other than
6 that their job duties satisfied the second and
7 third prongs of the administrative exemption test?

8 MR. McKEEBY: Object to the form of the
9 question as outside the scope of the topic
10 designations.

11 You can answer.

12 MR. HERRINGTON: We were directed to try
13 to replace your deposition with this one and I'm
14 trying to do that.

15 MR. McKEEBY: No, there was no direction
16 necessarily to do that.

17 We're presenting her, as you identified
18 at the beginning of this deposition, on the topic
19 designations.

20 I'll let her answer that question. I
21 don't think it's one that I was properly advised
22 that I needed to prepare a corporate representative
23 on, and that's the basis of my objection.

24 MR. HERRINGTON: I'm trying to find out
25 if I can get enough information from her or whether

1 I need to tell Judge Totenberg, sorry, Judge, the
2 corporate representative couldn't tell me enough,
3 so I need to depose Mr. McKeeby.

4 MR. McKEEBY: I understand that, but
5 nonetheless, we prepared her to speak on the topic
6 designations as stated.

7 And so I'm not in a position to present
8 her to provide company testimony on matters outside
9 of those designations.

10 So she can -- as she's done in the past
11 in this deposition, I'm going to allow her to
12 answer the question. I'm not going to instruct her
13 not to answer.

14 But I haven't prepared her to answer that
15 question on behalf of the company. That's all I'm
16 saying. She can answer the question.

17 MR. HERRINGTON: Please read my question
18 to her again.

19 (Whereupon, the requested portion of
20 the record was read by the reporter.)

21 MR. McKEEBY: Same objection.

22 You can answer.

23 A I can't answer the question because of
24 the way you phrased it.

25 BY MR. HERRINGTON:

1 Q What's wrong with the way I phrased it?

2 A You asked -- semantically, the trouble is
3 any more information. I'm trying to remember what
4 I answered the first time.

5 The second problem with the semantics of
6 the question is that it acts as though what I said
7 by way of information we provided was that we
8 satisfy the second and third prongs of the test.

9 We did not tell Paulo we satisfied the
10 second and third prongs of the test. That was part
11 of the advice he provided to us.

12 Q So exactly what information was provided
13 to Mr. McKeeby about the job duties of
14 implementation consultants?

15 MR. McKEEBY: Objection, asked and
16 answered.

17 And objection, it goes outside the scope
18 of the corporate representative designation topics.

19 You can answer.

20 A I don't know exactly what was
21 communicated. I know the substance of what was
22 communicated.

23 BY MR. HERRINGTON:

24 Q And how do you know that?

25 A By talking with Lynn, Bob, and other

1 members of the HR team that were employed by Tyler
2 at the time of the lawsuit.

3 Q And did you find out from them whether
4 the information given to Mr. McKeeby was in
5 writing?

6 A Did I find out from them whether the
7 information was provided in writing? No, I asked
8 for information about the substance of the
9 communications.

10 Q And Tyler has not performed any search of
11 its records to determine whether it possesses the
12 information -- the communications to -- any
13 communications to Mr. McKeeby describing the work
14 that implementation consultants performed?

15 MR. McKEEBY: Object to the form of the
16 question as outside the scope of the topic
17 designations.

18 You can answer if you know.

19 A Not to my knowledge.

20 MR. HERRINGTON: All right. That's it.
21 Thank you.

22 MR. McKEEBY: No further questions from
23 me.

24 Thank you, Matt.

25 (Deposition concluded at 4:56 p.m.)

1 (Signature reserved.)

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1 C E R T I F I C A T E

2 STATE OF GEORGIA:

3 COUNTY OF DEKALB:

4

5 I hereby certify that the
6 foregoing transcript was taken down, as
7 stated in the caption, and the questions
8 and answers thereto were reduced to
9 typewriting under my direction; that the
10 foregoing Pages 1 through 33 represent a
11 true and correct transcript of the
12 evidence given upon said hearing, and I
13 further certify that I am not of kin or
14 counsel to the parties in the case; am not
15 in the regular employ of counsel for any
16 of said parties; nor am I in anywise
17 interested in the result of said case.
18 The witness did reserve the right
19 to read and sign the transcript.

20 This, the 25th day of October 2019.

21

22

23

24

25 Job No. 538


Judith L. Leitz Moran, CCR-B-2312
Certified Court Reporter

1 DISCLOSURE

2
3 Pursuant to Article 10.B of the Rules and
4 Regulations of the Board of Court Reporting of the
5 Judicial Council of Georgia, I make the following
6 disclosure:

7 I am a Georgia Certified Court Reporter. I am
8 here as a representative of IST Reporting.

9 I am not disqualified for a relationship of
10 interest under the provisions of O.C.G.A.
11 9-11-28(c).

12 I was contacted by the office of IST Reporting
13 to provide court reporting services for this
14 deposition.

15 I will not be taking this deposition under any
16 contract that is prohibited by O.C.G.A. Section
17 15-14-37 (a) and (b).

18 I have no exclusive contract to provide
19 reporting services with any party to the case, any
20 counsel in the case, or any reporter or reporting
21 agency from whom a referral might have been made to
22 cover this deposition.

23 I will charge my usual and customary rates to
24 all parties in the case, and a financial discount
25 will not be given to any party to this litigation.

26 This, the 25th day of October 2019.

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Judith L. Leitz Moran, CCR-B-2312
Certified Court Reporter

Job No. 538

1 DISCLOSURE OF FIRM

2

3 I, IST Reporting, do hereby disclose pursuant
4 to Article 10.B. of the Rules and Regulations of
5 the Board of Court Reporting of the Judicial
6 Council of Georgia that IST Reporting was contacted
7 by DELONG, CALDWELL, BRIDGERS, FITZPATRICK &
8 BENJAMIN, LLC, to provide court reporting services
9 for this deposition and there is no contract that
10 is prohibited by O.C.G.A. 15-14-37(a) and (b) or
11 Article 7.C. of the Rules and Regulations of the
12 Board for the taking of this deposition.

13

14 There is no contract to provide reporting
15 services between IST Reporting or any person with
16 whom IST Reporting has a principal and agency
17 relationship nor any attorney at law in this
18 action, party to this action, party having a
19 financial interest in this action, or agent for an
20 attorney at law in this action, party to this
21 action, or party having a financial interest in
22 this action. Any and all financial arrangements
23 beyond our usual and customary rates have been
24 disclosed and offered to all parties.

25

26 This, the 25th day of October 2019.

27

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36 Job No. 538



FIRM REPRESENTATIVE
IST REPORTING

1 ERRATA PAGE

2 Pursuant to Rule 30(e) of the Federal
 3 Rules of Civil Procedure and/or Georgia Code
 4 Annotated 9-11-30(e), any changes in form or
 5 substance which you desire to make to your
 6 deposition testimony shall be entered upon the
 7 deposition with a statement of the reasons given
 8 for making them. To assist you in making any such
 9 corrections, please use the form below. If
 10 supplemental or additional pages are necessary,
 11 please finish same and attach them to this errata
 12 sheet.

13 I, the undersigned, ABIGAIL DIAZ-PEDROSA,
 14 hereby certify that I have read or have had read to
 15 me the foregoing, and that to the best of my
 16 knowledge said is true and accurate with the
 17 exception of the following corrections.

11

12	Page/Line/	Change	/	Reason
13	____/____/_____	/	_____	
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20	Sworn to and subscribed before me			
21	this ____ day of _____, 20__.			
22				
23	Notary Public.			
24	My Commission Expires _____.			
25	Job No. 538			

ABIGAIL DIAZ-PEDROSA

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Errata Sheet

To assist you in making any such corrections, please use the form below. If supplemental or additional pages are necessary, please furnish and attach them to this errata sheet.

I, the undersigned, Abigail Diaz-Pedraza, do hereby certify that I have read the foregoing deposition and that to the best of my knowledge said deposition is true and accurate (with the exception of the following corrections listed below).

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Sworn to and subscribed Before me this 20th day of November, 2019.

Deponent's Signature: Al Kray

Notary Public Signature: Andrea L. Fravert

My Commission Expires: _____

ANDREA L. FRAVERT
Notary Public - Maine
My Commission Expires
June 1, 2022

I.

INTRODUCTION

In this Fair Labor Standards Act (“FLSA”) action, the Settling Plaintiffs and Tyler jointly request that the Court enter a stipulated order approving the settlement reached between the Parties. The Parties have carefully and exhaustively negotiated a partial, no fault settlement in this action. They have agreed to resolve the disputed factual and legal issues on terms set forth in a settlement agreement, which generally is described below (the “Agreement”). Because the Parties have agreed to maintain the confidentiality of the specific terms of the Agreement, the Parties jointly request to present the Agreement to the Court in camera for review, if necessary, in connection with approval of the settlement.

Pursuant to the Agreement, the Parties seek approval of the settlement. The Parties stipulate to the following: that the settlement agreement reflects a reasonable compromise of issues actually in dispute, the settlement was reached in an adversarial context in which the Plaintiffs were represented by competent and experienced counsel, and the totality of the proposed settlement is fair and reasonable.

II.

PROCEDURAL HISTORY

On October 28, 2008, seven (7) Plaintiffs who formerly worked at Tyler and/or Defendant EDP Enterprises, Inc. filed this lawsuit in the United States District Court for the Eastern District of Texas, Marshall Division, alleging overtime violations under the Fair Labor Standards Act (“FLSA”). Thereafter, on May 9, 2009, Plaintiffs filed an Amended Complaint adding additional named plaintiffs who asserted the same overtime claims under the FLSA. By order of June 23, 2006, the Court granted Plaintiffs’ Motion for Conditional Certification.

There initially were four (4) different categories of employees in the lawsuit.¹ In May of 2010, the Parties engaged in a mediation as to three (3) of the four (4) groups of employees in the lawsuit and were able to reach a settlement of those groups' claims which ultimately was approved by this Court by order of December 28, 2010. Thereafter, the Parties commenced discovery as to the remaining category of Plaintiffs who performed software implementation functions.

Near the close of discovery, and pursuant to the Court's scheduling order, the Parties again participated in mediation before mediator William D. Hartsfield, who had presided over the first mediation and who has extensive experience mediating FLSA collective actions. After a full day of mediation on January 10, 2011, and further deliberations over the next two days, counsel for the Parties agreed to a final resolution of the claims of the remaining Plaintiffs in the case.

The Plaintiffs and opt-in Plaintiffs subject to this settlement are: Melanie Baird, Joy Bibles, Titus Britt, Jill Brown, Linda Carrington, Larry Churnovic, Edward David, Tony Dodd, Gayla Duke, Amy Dunn, Sandra Dunning, Betty Dupree, Eric Emde, Joy Flynn, Kimberly Gennette, Ronald Grimwood, Kelly Hampton, David Hayner, Kim Huynh, Geraldine Ingram, Bethany Maynard, Tulina McElhaney, Ilene Meyers, Laura Milburn, Kevin Mosenthin, Lorraine Mutch, Thomas O'Haver, Travis Void, Lisa White, and Eyvonne Wilton. The Parties, pursuant to the requirements of the FLSA, now request the Court to approve the resolution of the claims of the plaintiffs and opt-in plaintiffs identified above.

¹ Tyler does not intend to waive, through this Joint Motion or otherwise, its contention that the lawsuit is not appropriate for collective action under the FLSA due to divergent job responsibilities and duties of the plaintiffs and opt-in plaintiffs. As explained more fully herein, Tyler is agreeing to resolve part of this case only to avoid the fees and costs associated with continued litigation and reserves its right to contest certification should the Court not approve the Parties' settlement.

III.

THE COURT SHOULD APPROVE THE SETTLEMENT AGREEMENT

This Court should approve the settlement agreement because the settlement was achieved in an adversarial context, the Settling Plaintiffs are represented by competent and experienced counsel. Moreover, the Parties stipulate that the settlement provisions are fair and reasonable.

An FLSA claim, except in two circumstances, cannot be waived or settled. *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697, 706 (1945). The exceptions are, 1) that the Secretary of Labor can supervise the payment of back wages, or, 2) that the employer and employee present the proposed settlement to the district court for approval. 29 U.S.C. § 215(b). Both the Settling Plaintiffs and Defendants request this Court to approve the Parties' settlement agreement.

The settlement was negotiated at arm's length by experienced counsel who protected the rights of the Parties. Accordingly, the settlement reflects a reasonable compromise regarding bona fide disputes between the Parties with respect to liability and the amount of same under the FLSA. The Parties have agreed to a proposed settlement in order to avoid the necessity, expense, inconvenience and uncertainty of litigation. Both Parties are represented by counsel experienced in FLSA cases, and counsel for the Parties believe that settlement is in the best interests of their respective clients. For these reasons, the Parties respectfully request the Court approve their settlement as to the plaintiffs and opt-in plaintiffs identified herein.

IV.

**THE PARTIES REQUEST THAT THE COURT REVIEW THE SETTLEMENT
AGREEMENT IN CAMERA**

While the terms of the Settlement Agreement are summarized herein, the Parties have agreed to maintain the terms of the Agreement as confidential. As such, it is not filed as an exhibit to this motion. Rather, the Parties have agreed to present the actual Settlement Agreement documents, including, if necessary, affidavits by the Settling Plaintiffs' counsel discussing the Lodestar factors and other issues pertaining to reasonable attorneys for the settlement, in a form agreed to by the Parties, to the Court in camera, should the Court require. Such in camera review will allow the Parties to protect the confidentiality of the specific terms of the Settlement Agreement by avoiding any requirement that the document itself be made a matter of public record. The Parties would note that the form of the settlement agreement is identical to the one originally submitted to the Court in connection with the previous partial settlement reached by the Parties.

V.

CONCLUSION

The Parties believe that the settlement reached was a fair and reasonable compromise of the respective positions of both sides. The Parties therefore respectfully request the Court approve the settlement and enter an order dismissing the claims of the following settling Plaintiffs: Melanie Baird, Joy Bibles, Titus Britt, Jill Brown, Linda Carrington, Larry Churnovic, Edward David, Tony Dodd, Gayla Duke, Amy Dunn, Sandra Dunning, Betty Dupree, Eric Emde, Joy Flynn, Kimberly Gennette, Ronald Grimwood, Kelly Hampton, David Hayner, Kim Huynh, Geraldine Ingram, Bethany Maynard, Tulina McElhaney, Ilene Meyers, Laura Milburn, Kevin Mosenthin, Lorraine Mutch, Thomas O'Haver, Travis Void, Lisa White,

and Eyvonne Wilton. Entry of such an order will “secure the just, speedy, and inexpensive determination” of this action in accordance with Federal Rule of Civil Procedure 1.

Respectfully submitted:

/s/ Lauren F. Bagley

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